IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 479 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL DALABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR JC SHETH for Appellant

MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 02/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal has been preferred by the accused Kantilal Dalabhai Parmar against the judgment and order dated 15th May, 1992, passed by the learned Additional Sessions Judge, Dohad, in Sessions Case No. 11/92. The learned Additional Sessions Judge has recorded conviction of the accused for the offence punishable under section 302 IPC, and has passed the sentence of life imprisonment, and a fine of Rs.1000/-, in case of default of payment of fine, a further sentence of SI for six months has been passed.

It was alleged that on 16th September, 1991, at around 6-00 O'clock in the morning, the accused had stabbed his wife Parvatiben @ Paruben with a knife (Chharo) causing her grievous injuries, which resulted into her death. Thus, the accused had committed murder of his wife Paru, and had committed offence punishable under section 302 IPC. The accused was tried by the learned Additional Sessions Judge, Dohad,. The complaint (EX-17) was lodged by one Manubhai Dalabhai - the brother of the accused Kantibhai Dalabhai. The said Manubhai in the complaint stated that he and his younger brother-Kantibhai i.e. the accused were residing at village Jesavada, Taluka-Dohad, with their family. On 15th September, 1991, after supper, the said Manubhai, his wife and their children slept in the front room of their house, while the accused Kantibhai and his wife deceased Paruben slept in the middle room of the house. Early in the next morning at around 6-00 O'clock, Paruben raised an alarm and shouted that the accused Kantibhai was hitting her with knife and asked Manubhai for help. However, since the door was closed and neighbours had gathered, the door was broken-open. He saw Paruben lying dead in a pool of blood. She had received two stab wounds. The accused also had received one stab wound and was lying unconscious. The injured accused was immediately removed to the Hospital and Manubhai went to the Police Station to lodge the complaint. Pursuant to the said complaint, one Devisinh Mansinh (PW-9) was sent to the place of incident and had prepared the Inquest Panchnama. From the said Devisinh Mansinh, the investigation was taken over by the Police Sub Inspector Shri D.B.Rajput (PW-10). The body of the deceased Paruben was sent for postmortem. The cloths of the deceased, the bangles, the offending knife were recovered from the place of the incident and were sent to the Forensic Science Laboratory for forensic examination. The injured-accused Kantibhai was removed to Godhra Civil Hospital for treatment and after recovering from his injury and gaining consciousness, on 18th September,

1991, he gave a complaint (Mark-5/8) in respect of the injury received by him.

Dr. R.K.Shrivastav, Medical Officer, Cottage Hospital, Dohad (PW-2) performed the post-mortem on the body of the deceased Paruben. He proved the postmortem note (EX-15). He has certified that the deceased Paruben had received two stab wounds, one below the chest, and one between the chest and stomach. The stab wound below the chest had pierced the heart and the other stab wound had pierced the liver. He has certified that the death was caused on account of "cardio respiratory failure due to hemorrhage, shock following penetrating injury to heart, liver and intenstine." The said witness deposed that he had performed the postmortem on 16th September, 1991 at 6-15 in the evening, the injuries were inflicted some 12 -14 hours before. He opined that the stab wounds received by the deceased Paruben could have been caused by the muddamal knife. The injuries were ante-mortem and that both the injuries were sufficient to cause death. He specifically denied the suggestion that the said stab wounds were self-inflicted. He opined that such wounds could not have been self-inflicted. The complainant (PW-3) appears to have substantially improved upon his statement. In his deposition, he has stated that the accused and the deceased had cordial relations and that on the day of the incident at around 6-00 O'clock in the morning, both of them had shouted for help indicating that both of them were stabbed by some third person. He has categorically stated that the door connecting the middle room (place of the offence) and the rear room was open and the door of the rear room opening on the back was also open. The witness Shantaben Kalubhai- the mother of the deceased Paruben (PW-4) and Kalubhai Kevalji- the father of the deceased Paruben (PW-5) both have stated that the accused-Kantibhai did not have cordial relations with Paruben. Earlier, Paruben had delivered a daughter who died soon after her birth. Since then, Paruben was once again pregnant, but had miscarried. Kalubhai Kevalji (PW-5) has also stated that the message of the death of Paruben was sent by the complainant-Manubhai to the witness. He has stated that Manubhai had sent a written message (CHITTHI), in which he had stated that the deceased Paruben was killed by his brother. However, the said piece of paper was torn and thrown away by the witness. The witnesses Ranchhodbhai Ratnabhai (PW-6) and Badubhai Maganbhai (PW-7), the neighbours have not supported the prosecution. Devliben Manubhai, the wife of the complainant Manubhai (PW-8) also has not supported the prosecution. She has denied that the accused Kantibhai did not have good relations

with the deceased Paruben. The FSL report (EX-10) proved the presence of the human blood of group 'AB' on the clothes of the injured accused. The FSL report (EX-11) disclosed presence of human blood of group 'B' in the mud plaster collected from the scene of the offence, the clothes of the deceased Paruben, the quilt recovered from the scene of the offence and the muddamal knife (Chharo).

Considering the medical evidence, it is proved beyond doubt that the deceased Paruben died of the stab wounds caused to her by the muddamal knife, that the said wounds were not self-inflicted i.e. it was a case of homicide and not a suicide as suggested by the defence. The question is whether the said fatal injuries were given by the accused or not. Both the witnesses Manubhai Dalabhai and Devliben Manubhai who were residing with the deceased and the accused have admitted that the deceased and the accused were sleeping in the middle room of the house and the room was locked from within. Hence, it is proved that at the time of the incident, the accused and the deceased were alone in the room. Since the wounds were not self-inflicted, the same could have been caused by none other but the accused. The suggestion that some third person entered the room through its rear door and caused injuries to the deceased as well as the accused is not sustainable. If the rear door were open, there would have been no need for the complainant Manubhai and others to break-open the front door. Instead they could have entered the scene of offence through the rear door. There is one more reason why the said suggestion can not be believed. The accused in his statement recorded under section 313 CRPC has also not stated or even suggested that some third person came through the rear door and stabbed the accused as well as the deceased. The evidence on record, thus leads to one and the only inference that it was the accused who fatally stabbed the deceased Paruben and also stabbed himself. In our view, the prosecution has established the chain of circumstances which should lead to one and the only conclusion of guilt of the accused beyond reasonable doubt. The learned trial Judge has rightly appreciated the evidence and drawn a correct inference of the guilt of the accused.

In view of the above discussion, neither the conviction of the appellant-accused, nor the sentence passed upon him, warrant interference. The conviction and the sentence are confirmed. The appeal is dismissed.

(MS R.M.DOSHIT J)

(A.L.DAVRE J)

JOSHI